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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
10/519,214	12/27/2004	Eberhard Ammermann	5000-0110PUS1	7324	
2292	7590 03/27/2006		EXAM	INER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747			QAZI, SABI	QAZI, SABIHA NAIM	
FALLS CHURCH, VA 22040-0747			ART UNIT	PAPER NUMBER	
	·		1616		
			DATE MAILED: 02/27/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Subha Dazi		Application No.	Applicant(s)				
Sabha Gaz  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, PROM THE MAILING DATE OF THIS COMMUNICATION.  - If I WAILING WAITH Shorts have been intelligent of this communication.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (9) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (9) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (9) MONTHS from the mailing date of this communication.  - I Failute to right within the six of centred period for will be specified to be communication, over if timely fluid, may reduce any secured patient term adjustment. See 37 CFR 1.704(b).  Status  1)		10/519,214	AMMERMANN ET AL.				
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Acknowledgement is made of the response filed on 12/14/2005. Amendments are

entered. Claims 1-8 are pending.

Response to the Remarks

• Rejection under 35 U.S.C. 101 and 35 U.S.C. 112, second paragraph is withdrawn

because claims are amended.

• Upon further review art rejection is being made as follows:

**Copending Applications** 

Applicants must bring to the attention of the examiner, or other Office official involved

with the examination of a particular application, information within their knowledge as to other

copending United States applications which are "material to patentability" of the application in

question. MPEP 2001.06(b). See Dayco Products Inc. v. Total Containment Inc., 66 USPQ2d

1801 (CA FC 2003)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- 1. Determining the scope and contents of the prior art.
- 2. Ascertaining the differences between the prior art and the claims at issue.
- 3. Resolving the level of ordinary skill in the pertinent art.
- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-8 rejected under 35 U.S.C. 103(a) as being unpatentable over SACHSE et al. (DE 3609645). The reference teaches triazole-based combinations for synergistic control of plant diseases. Dithianon is one the combinations with triazole fungicides. See the abstract, pages 2, 3 examples and claims. The reference teaches the synergistic combinations, which embrace presently, claimed invention.

Instant claims differ from the reference in claiming a synergistic combination of very specific set of triazole fungicides with dithianon.

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It would have been obvious to one skilled in the art to prepare additional beneficial synergistic combination of dithianon and any triazole fungicides with the expectation of synergism between these two classes of fungicides. Since prior art teaches such synergistic effect of these compounds it would be a matter of routine experimentation to find out the synergistic amounts. Motivation has been provided by the prior art to make such combinations with the expectation of synergism. No criticality and/or unexpected results are noted.

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

EP 0526 206 reference teaches the combination of the compounds of formula (I) and dithianon and various other fungicidal compounds to enhance the fungicidal activity. Compounds of formula (I) of the reference contain a cyclopentane ring; none of the present compounds contain this ring. Furthermore, prior art does not teach synergistic mixture of fungicidal combination of dithianon (A) and azoles derivatives (B) as presently claimed.

## **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Padmanabhan, Sreeni (acting) can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Art Unit: 1616

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Saturday, March 18, 2006

SABIHA QAZI, PH.D PRIMARY EXAMINER